

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

WILLIAM ELLIOT CURRY, IV,

Plaintiff,

v.

JOE SHUMATE,

Defendant.

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Case No. 6:19-CV-594-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff William Elliot Curry, an inmate proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On February 10, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 3), recommending that Plaintiff's action be dismissed as frivolous and for failure to state a claim upon which relief may be granted. *Id.* at 5–6. Plaintiff filed objections on March 9, 2020. Docket No. 6.

The Court overrules Plaintiff's objections. Plaintiff argues that Defendant, his former counsel, failed to provide him necessary trial records and Defendant's ineffectiveness in prior proceedings violated Plaintiff's constitutional rights. Docket No. 6 at 6–13. Plaintiff's objections, however, do not dispute the Magistrate Judge's proper conclusions that Plaintiff cannot sue Defendant under § 1983 for constitutional violations. Section 1983 "claims require that the conduct complained of be done under color of law, and private attorneys, even court-appointed attorneys, are not official state actors, and generally are not subject to suit under section 1983." *Mills v. Criminal Dist. Court No. 3*, 837 F.2d 677, 679 (5th Cir. 1988). Plaintiff therefore cannot state a


§ 1983 claim against Defendant. Because Plaintiff does not object to any other specific portions of the Magistrate Judge's Report, the Court agrees with the Magistrate Judge that Plaintiff's claims should be dismissed.

Having made a *de novo* review of the objections raised by Plaintiff to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 3) be **ADOPTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim upon which relief may be granted. The dismissal of this lawsuit shall have no effect on Plaintiff's right to challenge his conviction through any lawful means.

So **ORDERED** and **SIGNED** this **19th** day of **March, 2020**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE